INDEX

Motion to Affirm 1
Questions Presented 2
Statement of Case 2
The Annexations 2
The Polling Places 3
The Litigation 5

Argument—

I. The Annexation 7
II. The Polling Places 9
III. Method of Electing the Aldermen 10
Conclusion 11

Table of Cases

Gomillion v. *Lightfoot*, 364 U.S. 399 (1960) 8
Louisiana v. *United States*, 380 U.S. 145 (1965) 10

Statutes

Miss. Code Ann. (1942-Recompiled) Section 3374-36, as amended 1962 ..... 4, 6
Rule 16, Rules of the United States Supreme Court 1
Section 5, Voting Rights Act of 1965 .....2, 6, 7, 8, 9, 10

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 670

ERNEST PERKINS, et al.,
Appellants,

vs.

L. S. MATTHEWS, Mayor of the City
of Canton, et al.,
Appellees.

ON APPEAL FROM A DISTRICT COURT OF THREE JUDGES,
UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI

MOTION TO AFFIRM

Pursuant to Rule 16 of the Rules of this Court, L. S. Matthews, Mayor of the City of Canton, et al., Appellees, moves that the judgment of the District Court be affirmed.

QUESTIONS PRESENTED

1. Whether the District Court erred:

(a) In finding that the extension and enlargement of the corporate boundaries of a municipality does not come within Section 5 of the Voting Rights Act of 1965.

(b) In finding that the redesignation of polling places for the municipal primary and general elections does not come within Section 5 of the Voting Rights Act of 1965.

(c) In finding that the election of aldermen from wards but by a majority vote of the entire electorate of the municipality, pursuant to a 1962 statute of the State of Mississippi, does not come within Section 5 of the Voting Rights Act of 1965.

STATEMENT OF CASE

The City of Canton, Mississippi, is a code charter municipality under the Laws of the State of Mississippi, and operates under an aldermanic form of government consisting of a mayor, an alderman at large and one alderman from each of the four wards into which the city is divided.

The population of the city according to the 1960 Census was 9,707. The estimated population at the time of the filing of the suit in question is 12,000. At the time of the filing of the suit there were 5,995 qualified electors in the city of which 3,042 were black and 2,953 were white.

THE ANNEXATIONS

In the later part of 1962, or early 1963, the governing authorities formulated a long range plan for boundary extensions, for the future growth and development of the city, giving priority to the annexation of an area to the south, then to the east and last to the north. Because of

the magnitude of the project and the expenditures involved, the annexations could not be made at one time but only over a period of years, and only after the expenditure of approximately $400,000.00 to extend and improve the city's sanitary sewerage collection and disposal system. The necessary sewerage improvements were completed in early 1964. In 1965 the city annexed the area to the south, in 1966 the area to the east and in 1968, the area to the north, all as shown on the map furnished by Appellees, but introduced in evidence in this cause by agreement as Appellants-Plaintiff's Exhibit 2, at the June 2nd hearing before the Three-Judge District Court. The annexations are also set forth in paragraphs 5, 6 and 7 of the Stipulation introduced as Appellants-Plaintiff's Exhibit 1 at that hearing. Each of such annexations were done in accordance with the Laws of the State of Mississippi, including the ratification and approval thereof by the Chancery Court of Madison County, Mississippi. The municipality has expended approximately $750,000.00 for utilities and sewerage improvements and extensions in these areas, as shown by paragraphs 8 and 9 of the Stipulation. The parties stipulated and the lower court found that the racial composition of the adult population of the annexed areas at the time of annexation was:

Annexation	Population	Black	White
1965	46	46	0
1966	92	28	64
1968	120	8	112

THE POLLING PLACES

In April of 1969, the Mayor and Board of Aldermen, as required by law, adopted a resolution designating the polling places to be used in the 1969 municipal primary and general elections. This resolution was published in

the Madison County Herald, a newspaper published and of general circulation in the City of Canton, Mississippi, as required by law. In addition, the location of the polling places was widely advertised as a news item in the paper for several weeks. The polling places so designated were different from the ones used at the 1965 elections, which were the last municipal elections held after November 1, 1964, prior to the filing of the complaint in this suit.

In regard to the election of aldermen, *Miss. Code Ann.* (1942-Recompiled) Section 3374-36, approved May 24, 1962, provides:

> § 3374-36. Number of aldermen and wards-selection of aldermen. In all municipalities having a population of less than ten thousand (10,000), according to the latest available Federal Census, there shall be five (5) aldermen, which aldermen may be elected from the municipality at large, or in the discretion of the municipal authority, the municipality may be divided into four (4) wards, with one alderman to be selected from each ward and one from the municipality at large. On a petition of twenty per cent (20%) of the qualified electors of any such municipality, the provisions of this Act as to whether or not the aldermen shall be elected from wards or from the city at large shall be determined by the vote of the majority of such qualified electors of such municipality voting in a special election called for that purpose. All aldermen shall be selected by vote of the entire electorate of the municipality. Those municipalities which determine to select one aldermen from each of the four (4) wards shall select one from the candidates for alderman from each particular ward who shall be a resident of said ward by majority vote of the entire electorate of the municipality.
>
> In all municipalities having a population of ten thousand (10,000) or more, according to the latest available Federal Census, there shall be seven (7) aldermen, which aldermen may be elected from the

municipality at large, or in the discretion of the municipal authority, the municipality may be divided into six (6) wards, with one alderman to be selected from each ward and one from the municipality at large. On a petition of twenty per cent (20%) of the qualified electors of any such municipality, the provisions of this Act as to whether or not the aldermen shall be elected from wards or from the city at large shall be determined by the vote of the majority of such qualified electors of such municipality voting in a special election called for that purpose. This bill in no way affects the number of aldermen, councilmen, or commissioners of any city operating under a special charter. *All aldermen shall be selected by vote of the entire electorate of the municipality. Those municipalities which determine to select one alderman from each ward shall select one of the candidates for alderman from each particular ward by majority vote of the entire electorate of the municipality.*

Prior to the passage of the Voting Rights Act of 1965, the city elected to be divided into four wards. The ward lines have not been changed since November 1, 1964.

Through error the 1965 elections were not held in accordance with this statute in that instead of electing four aldermen, one from each ward but by a majority vote of the entire electorate of the municipality, four aldermen were elected, one from each ward but by a majority vote of the electorate of the particular ward involved, as provided under the statute as it existed prior to the 1962 amendment. Thus, the city unintentionally followed the old law instead of the 1962 statute.

THE LITIGATION

The quadrennial municipal primaries were required by law to be held on May 13, and 20, 1969, and the general election on June 3, 1969.

On May 1, 1969, the Appellants filed a complaint in the United States District Court for the Southern District of Mississippi, seeking to enjoin the 1969 primary and general elections on the grounds that the 1966 and 1968 annexations and the change of polling places were within the Section 5 of the Voting Rights Act of 1965 and had not been approved either by the United States Attorney General or by a declaratory judgment of the United States District Court for the District of Columbia. The Appellants requested that the matter be heard by a Court of three judges and prayed for a temporary restraining order until the Court could be empaneled and convened.

On May 9, 1969, Honorable Walter L. Nixon, United States District Judge for the Southern District of Mississippi, issued an order temporarily restraining the elections until the complaint could be heard on its merits before a Three-Judge Court.

On May 30, 1969, the complaint was amended to include the method of electing the four aldermen as prescribed by *Miss. Code Ann.* (1942-Recompiled) Section 3374-36, as amended in 1962, on the ground that it had not been followed in past elections.

The Appellee-Defendants included the 1965 annexation as an issue by way of their answer to the complaint. The original and amended complaint neglected to challenge this annexation, which was the first under the city's long range boundary extension program and which included only black residents.

On June 2, 1969, the case was heard on its merits before a Three-Judge Court composed of Honorable J. P. Coleman, Circuit Judge and Honorable W. H. Cox and Honorable Walter L. Nixon, Jr., District Judges, on the Section 5 issue. The Appellants introduced no evidence

to support the allegations in the complaint pertaining to violations of the Fifteenth Amendment. On July 17, 1969, the Court rendered its opinion and on July 24, 1969, entered its judgment, dismissing the complaint, and finding that the issues raised by the complaint, as amended, did not come within Section 5 of the Voting Rights Act of 1965.

Subsequent thereto, the governing authorities of the city, reset the elections as follows: first primary, October 7, 1969, second primary, October 14, 1969, and general election, October 28, 1969.

The Appellants then moved the District Court for a stay of the elections pending appeal, which was denied by order entered September 12, 1969. The Appellants next applied to this Court for a stay and injunction pending appeal, which was denied on October 1, 1969, by Mr. Justice Black.

Accordingly, the municipal primary and general elections were held on the above stated dates, and officers were elected. They have been properly qualified and commissioned to hold the offices to which elected and have served in such capacities since November 1, 1969.

ARGUMENT

I.

The Annexation

There is no evidence in the record that the three annexations involved had any discriminatory purpose or effect. In fact, the Stipulation introduced in evidence undisputedly establishes otherwise, as does the Appellants' declination to pursue their original contention that a Fifteenth Amendment issue was involved. Therefore, the case

of *Gomillion* v. *Lightfoot*, 364 U.S. 399 (1960), is no authority for the contentions of the Appellants.

Also, Appellants respectfully submit, that the annexations are established by the evidence to have been required by the normal and orderly growth of a relatively small but progressive municipality, and not a sham to discriminate against the Appellants. Indeed, the city's expenditure of a sum in excess of $750,000.00, and the cost of other municipal services in the annexed areas, confirms this.

Therefore, the question is did Congress intend to include municipal expansions, admittedly non-discriminatory, within Section 5? Or stated otherwise, is the growth, and development of every municipality within the few states covered by the Voting Rights Act of 1965 subject to the discretion of the Attorney General or the District Court for the District of Columbia? Surely not. National policy is to promote growth, not stifle it, to encourage progress, not stagnation. In this respect, Appellees point out that an annexation in and of itself has no effect whatsoever upon the number of qualified electors in the municipality or racial composition of the electorate. The inhabitants of an annexed area must still fulfill the residency requirements in order to register to vote, and even then may never choose to do so. If they do choose to register, it is a personal decision and act, not an act of any political subdivision. Therefore, the annexations cannot be seriously said to constitute "a voting qualification or prerequisite to voting or standard, practice or procedure with respect to voting".

To hold that these undisputedly non-discriminatory annexations come within Section 5 and are therefore void, would unleash numerous and insurmountable problems.

Among them are the status of sales and ad valorem taxes collected over the years, in the annexed area, the jurisdiction of the police and fire departments, the effect on reduced fire insurance rates in the area, the status of municipal bonds issued for improvements in these areas, the status of zoning, building, housing and plumbing codes.

Thus, it is submitted that the District Court was correct in deciding that the annexations are not within the scope of Section 5.

II.

The Polling Places

The polling places were changed for reasons of necessity and convenience to the voters. As previously stated the City is now and was on November 1, 1964, divided into four wards. The ward lines have not been changed since 1963, and are shown on the map introduced in evidence below as Appellants-Plaintiff's Exhibit 2. Under Mississippi Law, there must be a polling place within each of the four wards. The polling places for Wards II and III at the 1965 elections were located in bank lobbies. The owners would not permit their use at the 1969 elections because of the disruptive effect on business. These polls had to be moved, so new polling places were designated. The polling places for Wards I and II used in the 1965 elections did not have adequate parking facilities or space to accommodate the increased number of voters or voting machines, which were to be used for the first time, replacing paper ballots previously used. Therefore, these two were moved to insure an orderly and efficient election for the convenience of the electors. Thus, the change in polling places was a matter of necessity, and not of choice. There was nothing else the election officials could do and faithfully discharge

their duties to the electorate of insuring conveniently accessible, spacious, and efficient facilities so that all who choose to vote might vote without undue delay.

Clearly such minor election procedures as this was not intended by Congress to be covered by Section 5, and the District Court did not err in so holding.

III.

Method of Electing the Aldermen

Through mistake, misrepresentation, ignorance or a combination thereof, the 1965 primary and general elections of the aldermen from the four wards were not held as required by the 1962 statute. In 1969, the city sought to rectify this situation and to follow the law in keeping with the "one-man-one-vote" rulings of this Court. It should be pointed out that a majority of the voters were black. Thus, the city's action in effect extended the black majority to all four wards rather than confining it to two wards as it would have been under the method followed in the 1965 elections. There is no evidence in the record to even suggest that this change "was a sudden adherence to previously ignored laws as a discriminatory device" so as to come within the "Freeze Doctrine" cases such as *Louisiana* v. *United States*, 380 U.S. 145 (1965). To the contrary, it would be difficult indeed to discriminate against a majority of the electorate by extending voting power rather than confining it. The effort was clearly made in good faith to correct a past mistake and not used as a discriminatory device. This conclusion is readily confirmed by common sense and the record does not suggest otherwise.

CONCLUSION

It is earnestly urged that the decision of the Three-Judge District Court is correct and that no substantial question on the merits has been raised or presented by the jurisdictional statement filed herein by Appellants. Therefore, the judgment of the District Court should be affirmed.

Respectfully submitted,

A. F. SUMMER
Attorney General of the State of Mississippi
WILLIAM A. ALLAIN
Assistant Attorney General of the State of Mississippi
P.O. Box 220
Jackson, Mississippi
R. L. GOZA
114 W. Center Street
Canton, Mississippi 39046
Attorneys for the Appellees